

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DYLAN KEITH O’FLAHERTY and
NEAL PATRICK O’FLAHERTY,

Plaintiffs,

v.

No.1:20-cv-00239-JFR

U.S. DEPARTMENT OF EDUCATION,
NORTHWEST COMMISSION ON COLLEGES
AND UNIVERSITIES, and STUDENT PRIVACY
POLICY OFFICE,

Defendants.

**MEMORANDUM OPINION AND ORDER
GRANTING LEAVE TO FILE AMENDED COMPLAINT**

THIS MATTER comes before the Court on Plaintiffs’ Complaint and Request for Injunction, Doc. 2, filed March 16, 2020 (“Complaint”).

The Complaint alleges that Plaintiffs, while students at UNLV, were victims of “kidnapping, assault and battery, criminal harassment and doxing of private, personal information ... by over one dozen individuals, including UNLV and CSN college students,” and that UNLV administration and staff made fraudulent disclosures to students. Complaint at 5. The only factual allegations regarding Defendants are:

Since the date of October 5th, 2019, UNLV has been in non-compliance with federal FERPA [Family Educational Rights and Privacy Act] law in this case. The [Defendant] U.S. Department of Education and the [Defendant] Student Privacy Policy Office have been aware of this set of facts for months. Despite being provided with copious evidence regarding the facts of this case, [an employee of Defendant Student Privacy Policy Office] has stated his intention to “close out” the ongoing FERPA complaint before the Student Privacy Policy Office. [He] has provided no legal justification for this stated decision, nor has [he] conducted an investigation into the claims brought forth to his office. [He] has stated that he will “close out” this case without so much as having even begun an investigation; in active violation of constitutional, consumer, and students’ rights UNLV is being

allowed by the [Defendants] to continue criminally violating the Family Educational Rights and Privacy Act (FERPA)

Complaint at 4-5.

The Complaint fails to state a claim upon which relief can be granted because it does not state with particularity what each Defendant did to Plaintiffs. “[T]o state a claim in federal court, a complaint must explain what each defendant did to him or her; when the defendant did it; how the defendant’s action harmed him or her; and, what specific legal right the plaintiff believes the defendant violated.” *Nasious v. Two Unknown B.I.C.E. Agents, at Arapahoe County Justice Center*, 492 F.3d 1158, 1163 (10th Cir. 2007). While the Complaint states that Defendants “have been aware of this set of facts” and are allowing UNLV to violate FERPA, it does not set forth any allegations identifying the specific legal right Plaintiffs believe Defendants violated or state how Defendants violated that right.

The Court grants Plaintiff leave to file an amended complaint. The Court reminds Plaintiff that a pleading that states a claim for relief must contain:

- (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
- (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
- (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

Fed. R. Civ. P. 8(a).

IT IS ORDERED that Plaintiffs may file an amended complaint within 21 days of entry of this Order. Failure to timely file an amended complaint may result in dismissal of this case.


UNITED STATES MAGISTRATE JUDGE